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### Electric Utility Pre-CPCN Approvals and Applications

**Description:** This guidance summarizes waste-related requirements for proposed large electric generation facilities (100 megawatts or more). It is intended to assist the electric industry in preparing proposals, assist Department (DNR) Waste Program staff in reviewing proposals and ensure compliance with requirements of the Power Plant Siting Law and approved DNR procedures. This guidance describes:

- section 196.491(3), Wis. Stats., also known as the Power Plant Siting Law
- procedures in DNR Secretary memos (available at <http://intranet.dnr.state.wi.us/int/aw/energy/energy.html>): “Guidance for DNR Power Plant Project Managers”, 2/18/02; “Department Review of Power Plants”, 12/27/01; and related guidance
- timelines for environmental analysis and review in accordance with chs. 274, 204, and s. 1.11, Wis. Stats., also known as the Wisconsin Environmental Policy Act (WEPA)
- suggested minimum information to be included in an engineering plan
- criteria for identifying pre-construction approvals (pre-CPCN approvals)
- criteria for identifying pre-operation approvals (pre-CPCN applications)
- other solid waste-related regulatory requirements often applicable to electric plant operations, but not associated with a written approval (or exemption)

This document replaces Lakshmi Sridharan’s December 26, 1991 memo, subject: “Pre-Certificate Approvals - WEPCO’s (Proposed) Oak Creek Power Plant”. This new guidance is needed due to the following changes in Wisconsin law:

- In 1999, s. 196.491(3), Wis. Stats., was revised and ch. NR 170, Wis. Adm. Code was recinded.
- In 1997, ch. NR 538, Wis. Adm. Code was adopted to address certain industrial byproduct reuse.

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### Wisconsin Statutory Requirements:

Certain procedures addressed by the Power Plant Siting Law supersede other requirements:

- Applications for approvals required for construction or operation must have completeness determination by DNR within 30 days of receipt. Applications for approvals required for construction of a power plant must be acted on (approved or denied) by DNR within 120 days of being complete.
- DNR has entered into a Memorandum of Agreement (MOA) with PSC regarding WEPA compliance for power plant projects. Under the MOA, PSC is the lead agency for WEPA purposes, unless DNR decides to go through its own separate EA or EIS process.

Section 289.01(33), Wis. Stats., defines “solid waste”. Coal ash and other wastes generated from power plant operations are solid wastes regulated under chs. NR 500 to 538, Wis. Adm. Code.

Sections 196.491(1)(e) & (g), Wis. Stats., define an electric generating "facility" to include the generating equipment and associated facilities designed for operation.

Section 289.29(5), Wis. Stats., specifies time limits for issuance of a feasibility determination for a landfill proposed as part of a utility project.

Section 289.29(1)(d), Wis. Stats., requires a landfill design capacity based on a landfill life of 10 to 15 years.

The following table outlines applicant, DNR, and PSC actions required by section 196.491(3), Wis. Stats., which may be waste-related:

WHO	ACTIONS REQUIRED by S. 196.491(3), WIS. STATS. , Which may be waste-related	REFERENCE
Applicant	Submit Engineering Plan: Applicant submits an engineering plan at least 60 days before submitting an application to the PSC for a CPCN.	S. 196.491(3)(a)3.a., Wis. Stats.
DNR	Respond to Engineering Plan: DNR provides a separate list of required pre-construction approvals and pre-operation approvals within 30 days of receiving the engineering plan. WA Program communicates the approvals required in a memo to DNR's Project Manager.	S. 196.491(3)(a)3.a., Wis. Stats.
Applicant	Submit Approval Applications: Applicant must apply for the identified approvals within 20 days after DNR provides the list. An applicant may supplement applications deemed incomplete.	S. 196.491(3)(a)3.b., Wis. Stats.
DNR (All 3 of these responses are required)	Approval Applications Completeness: DNR must issue a completeness decision on the approval application within 30 days after receiving the approval applications. An approval application is considered complete if DNR does not issue a timely incompleteness determination. Completeness must be determined separately for pre-construction approvals vs. pre-operation approvals. WA Program issues completeness notice to applicant with copy to DNR's Project Manager and Regional Coordinator. Complete applications are needed before PSC may finalize the CPCN. *	S. 196.491(3)(a)3.b., & 196.491(3)(e), Wis. Stats.
	Pre-Construction Approvals: DNR must issue decisions for approvals required prior to construction within 120 days after the application is deemed complete. WA Program issues decisions to applicant and communicates decisions in a memo to DNR's Project Manager.	S. 196.491(3)(a)3.b., Wis. Stats.
	Pre-Operation Approvals: DNR must issue decisions for approvals required only prior to operation according to timelines in chs. NR 500 to 538, Wis. Adm. Code. WA Program issues decisions to applicant and communicates decisions in a memo to DNR's Project Manager.	Ch. 289, Wis. Stats. (not specified by Power Plant Siting Law)
PSC and DNR	WEPA Compliance: PSC and DNR must issue a completeness decision regarding adequacy of information for WEPA compliance within 30 days after receiving the approval applications. A complete application will have sufficient information to allow preparation of an EA (environmental analysis) and review under WEPA. An approval application is considered complete for WEPA purposes, if a timely incompleteness decision is not issued. WA Program communicates the completeness in a memo to DNR's Project Manager. *	S. 1.11, Wis. Stats., & Ch. PSC 4 & Ch. NR 150, Wis. Adm. Code
	After the application is deemed complete for WEPA compliance, PSC must hold a public hearing. A 30 day public notice is required prior to the hearing.	S. 196.491(3)(b), Wis. Stats.
PSC	CPCN Application Approval: PSC must issue a decision on the CPCN application within 180 days after it is deemed complete. The CPCN is considered approved if PSC does not issue a timely decision, unless PSC is granted an extension by the Dane County Circuit Court.	S. 196.491(3)(g)1., Wis. Stats.
	PSC may not finalize the CPCN until DNR has issued all pre-construction approvals.	S. 196.491(3)(d) & (e), Wis. Stats.

\* Review the Approval Applications Completeness and WEPA Compliance concurrently.

## Engineering Plan:

DNR must respond to an engineering plan with a list of approvals that appear to be required for construction and operation. In addition, DNR should provide a list of any other pertinent regulatory requirements that may not be associated with an approval. There is no completeness for an engineering plan, so additional information needed for DNR determination on an approval must be requested as a completeness item for that application. The table below lists suggested minimum waste-related information to be included in an engineering plan:

ITEMS	SUGGESTED MINIMUM WASTE-RELATED INFORMATION for an ENGINEERING PLAN *
Waste types and characterization	Information from similar existing operations, literature sources, and/or the equipment manufacturer. Describe waste generating processes, including chemical additions. Provide laboratory data, if available. Identify constituents of concern likely to be in the wastes.
Waste types and quantities	Proposed to be reused and the reuse methods, and proposed to be disposed and disposal locations.
Compare projected waste generation rates vs. expected reuse markets/projects and existing landfill disposal capacities	Include all the following: <ul style="list-style-type: none"><li>• Waste generation from all the applicant's existing and proposed electric utilities expected to compete for the same reuse and disposal capacities.</li><li>• Expected beneficial reuse and disposal capacities available.</li><li>• Waste generation rates vs. reuse and disposal capacities over a minimum of 10 years. Over that time period, describe how reuse and disposal capacities are expected to diminish, and show whether adequate reuse and disposal capacities are expected to be available.</li><li>• For each identified landfill, list design updates or remediation work required prior to disposal of any newly proposed wastes.</li></ul>
Maximum waste storage	Storage for waste generation in excess of the combination of reuse markets and disposal capacity.
Additional landfill capacity	Potential new landfill (including new expansion of an existing landfill) in case reuse does not meet expectations, and if reuse and existing disposal capacities are not expected to be sufficient.

\* Specific waste-related information that must be included in the engineering plan is not required by law. The table lists suggested information to be included in the engineering plan to help ensure completeness for WEPA purposes and so that DNR is able to provide an accurate list of the approvals required for construction and operation of the power plant.

## Pre-Construction Approvals – Must be Obtained Prior to CPCN Issuance:

Before the PSC may issue a CPCN, the applicant must obtain all approvals identified as required for facility construction. Hence the term “pre-CPCN approval”. In many cases, no Waste Program approvals will be required prior to commencing construction of the power plant. Each proposal must be reviewed to appropriately identify pre-construction approvals.

Pre-construction approvals are limited to approvals (including written exemptions) for waste activities that are proposed to take place at the power plant site and that are explicitly required prior to commencing construction at the power plant site.

DNR must determine if an application for a pre-construction approval is complete within 30 days of receipt, otherwise the application is automatically considered complete. If DNR deems an application incomplete, DNR cannot approve the application and PSC cannot finalize the CPCN. Each application

must have enough information to allow DNR to both act on the applications (approve or deny) and reasonably predict impacts for WEPA purposes. Once an application for a pre-construction approval is deemed complete, DNR has 120 days to act on the application.

The table below lists waste-related activities and corresponding submittals that may require approval prior to construction of power plant, if the activity is proposed to take place at the power plant site:

<b>PROPOSED ACTIVITY at the POWER PLANT SITE</b>	<b>SUBMITTALS NECESSARY for PRE-CONSTRUCTION APPROVALS *</b>	<b>ADDITIONAL INFORMATION</b>
Removal of historic waste fill before or during construction of the power plant; or construction of the power plant within a historic waste fill area	Submit a request and obtain approval in accordance with s. NR 506.085, Wis. Adm. Code.	An application form may be available for this request.
Removal of dredge sediments before or during construction of the power plant	Submit a request and obtain approval in accordance with applicable rules in chs. NR 500 to 538, Wis. Adm. Code.	DNR must hold public meetings before approving reuse or disposal of dredge material (see guidance WA004 “Dredged Materials Disposal Approval – Public Meeting Requirement – s. 289.54, Wis. Stats.”).
Construction of a storage facility for a waste not regulated under ch. NR 538, Wis. Adm. Code before or during construction of the power plant site	Submit an ISI request and obtain a preliminary opinion in accordance with s. NR 502.04(2), Wis. Adm. Code. Submit a plan of operation and obtain approval in accordance with s. NR 502.05, Wis. Adm. Code.	An approval is not required for storage in accordance with s. NR 538.16, Wis. Adm. Code, but requires initial certification (see Additional Regulatory Requirements, below).

\* Submittals for pre-construction approvals are subject to maximum 30 day completeness determination under the Power Plant Siting Law.

### **Pre-Operation Approvals - Must Be Applied For Prior to CPCN Issuance:**

Before PSC may issue a CPCN, the applicant must apply for (not obtain) all approvals identified as required for facility operation. Hence the term “pre-CPCN applications”. One or more Waste Program approvals are commonly needed for power plant operation. Each proposal must be reviewed to appropriately identify pre-construction approvals.

Pre-operation approvals include all remaining approvals (including written exemptions) that will be needed for operation of the power plant, typically including any approvals needed to construct and operate ancillary features that are either:

- not located at the power plant site, or
- located at the power plant site, but not integral to power plant construction.

DNR must determine if an application for a pre-operation approval is complete within 30 days of receipt, otherwise the application is automatically considered complete. Incomplete applications for pre-operation approvals do not prevent PSC from finalizing the CPCN, as long as the applicant has provided enough information to support a reasonable prediction of impacts for WEPA purposes. Once a pre-operation approval application is deemed complete, review timelines are in accordance with chs. NR 500 to 538, Wis. Adm. Code.

The Waste Program deems it necessary for a coal fired power plant to have existing disposal capacity for at least 10 years of power plant operation, or an equivalent combination of reuse markets and disposal capacity. If the engineering plan doesn't adequately document reuse and disposal capacity, an application for additional disposal capacity must be submitted prior to power plant construction (and prior to CPCN issuance). In such cases, the applications must be submitted through the feasibility report stage, although a favorable feasibility determination is needed only prior to operation of the power plant.

The table below lists the submittals necessary for pre-operation approvals, based on proposed activities related to the power plant project, and indicates by when the approval must be obtained:

<b>PROPOSED ACTIVITY</b>	<b>SUBMITTALS NECESSARY for PRE-OPERATION APPROVALS <sup>1</sup></b>	<b>BY WHEN APPROVAL MUST BE OBTAINED</b>
Reuse listed in s. NR 538.10, Wis. Adm. Code or similar reuse regulated under ch. NR 538, using wastes not listed in ch. NR 538, Tables 1A to 3 .	Submit a waste testing plan in accordance with s. NR 538.06(1), Wis. Adm. Code.	Before characterizing the waste under s. NR 538.06(2), Wis. Adm. Code.
Processing or reuse not exempt under s. NR 502.08(2)(d), (g) or (h), and not regulated by ch. NR 538. Wis. Adm. Code	Submit an application for processing or reuse under applicable rules, such as ss. NR 500.08(4) or (5), 500.10, 502.08(2)(I), or ch. NR 518, Wis. Adm. Code.	Before commencing the processing or reuse.
Storage off the power plant site of a waste not regulated under ch. NR 538, Wis. Adm. Code, (storage at a landfill, or other location not at the power plant site) .	Submit an ISI request and obtain an inspection and a preliminary opinion, in accordance with s. NR 502.04(2), Wis. Adm. Code. Submit a plan of operation and obtain approval in accordance with s. NR 502.05.	Before storing the waste.
Disposal at an existing landfill .	Submit a plan modification for the landfill to accept the waste, in accordance with s. NR 514.04(6), Wis. Adm. Code. Include a description of any design upgrade or remediation needed at the landfill.	Before disposing the waste.
Disposal at a new landfill (including expansion of an existing landfill)	Submit an ISI request and obtain an inspection. Submit an ISR, and obtain a completeness determination and a preliminary opinion. Submit a feasibility report, and obtain a completeness determination and a favorable feasibility determination. All in accordance with chs. NR 509 and 512. <sup>2</sup>	Before DNR can act on a plan of operation for the landfill – otherwise, no specific time when a favorable feasibility determination must be obtained.

- 1 All submittals for pre-operation approvals are subject to maximum 30 day completeness determination under the Power Plant Siting Law.
- 2 The Power Plant Siting Law timelines take precedence over administrative rule. Therefore, a new landfill for disposal of utility wastes from a proposed large electric generation facility is not subject to s. NR 509.05, Wis. Adm. Code which requires that an ISR opinion be obtained prior to submittal of a feasibility report.

## Additional Regulatory Requirements:

DNR's response to an engineering plan should list all regulatory requirements that seem likely to apply, in addition to necessary pre-construction and pre-operation approvals. The following table lists waste-related regulatory requirements that may apply, but do not involve issuance of an approval:

PROPOSED ACTIVITY	ADDITIONAL REQUIREMENTS THAT MAY APPLY
Reuse regulated by ch. NR 538, Wis. Adm. Code .	Requires initial certification under s. NR 538.14(1), Wis. Adm. Code.
Storage regulated by ch. NR 538, Wis. Adm. Code	Must be in accordance with s. NR 538.16, Wis. Adm. Code, and requires initial certification under s. NR 538.14(1), Wis. Adm. Code.
Solid waste transportation	Must be in accordance with s. NR 502.06. A license is required unless the transport is exempt under s. NR 502.06(2), Wis. Adm. Code, or written exemption is obtained.

**Legal Note:** This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

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Approved: \_\_\_\_\_



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